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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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JOSEPH T. TOY,

Plaintiff,

v.

STATE OF NEVADA, et al.,

Defendants.

Case No. 2:14-cv-01719-APG-PAL

REPORT OF FINDINGS AND  
RECOMMENDATION

(IFP App – Dkt. #1)

Plaintiff Joseph T. Toy is proceeding in this action pro se. Plaintiff has requested authority pursuant to 28 U.S.C. § 1915 to proceed in forma pauperis, and he submitted a complaint. This matter was referred to the undersigned pursuant to the provisions of 28 U.S.C. § 636(b)(1)(A) and (B) and Local Rules IB 1-3 and 1-4.

**I. In Forma Pauperis Application (Dkt. #1).**

Plaintiff has submitted the affidavit required by § 1915(a) showing that he is unable to prepay fees and costs or give security for them. Accordingly, his request to proceed in forma pauperis will be granted pursuant to 28 U.S.C. § 1915(a). The court will now review Plaintiff's complaint.

**II. Screening the Complaint**

Upon granting a request to proceed in forma pauperis, a court must additionally screen a complaint pursuant to § 1915(a). Federal courts are given the authority dismiss a case if the action is legally "frivolous or malicious," fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). When a court dismisses a complaint under § 1915(a), the plaintiff should be given leave to amend the complaint with directions as to curing its deficiencies, unless it is clear from

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1 the face of the complaint that the deficiencies could not be cured by amendment. *See Cato v.*  
 2 *United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

3 Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a  
 4 complaint for failure to state a claim upon which relief can be granted. Review under Rule  
 5 12(b)(6) is essentially a ruling on a question of law. *See Chappel v. Laboratory Corp. of*  
 6 *America*, 232 F.3d 719, 723 (9th Cir. 2000). A properly pled complaint must provide a short and  
 7 plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P.  
 8 8(a)(2); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Although Rule 8 does not  
 9 require detailed factual allegations, it demands “more than labels and conclusions” or a  
 10 “formulaic recitation of the elements of a cause of action.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678  
 11 (2009) (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). The court must accept as true all  
 12 well-pled factual allegations contained in the complaint, but the same requirement does not apply  
 13 to legal conclusions. *Id.* Mere recitals of the elements of a cause of action, supported only by  
 14 conclusory allegations, do not suffice. *Id.* at 679-80. Secondly, where the claims in the  
 15 complaint have not crossed the line from plausible to conceivable, the complaint should be  
 16 dismissed. *Twombly*, 550 U.S. at 570.

17 Plaintiff alleges that the State of Nevada and Clark County detained his mother, Mrs.  
 18 Doris Cecelia Toy, unlawfully and without justification, and caused her physical and emotional  
 19 harm amounting to elder abuse. In doing so, the Defendants recklessly endangered Mrs. Toy’s  
 20 life, and deprived her of freedom and rights under the law without due process of law and in  
 21 violation of the equal protection clause of the United States Constitution. Specifically, Plaintiff  
 22 alleges Defendants imprisoned Mrs. Toy to “prematurely end her life as some form of  
 23 punishment for being old” and “murdered her through the manipulation and exploitation of their  
 24 authority.” He asserts his mother objected to the guardianship’s office serving as her legal  
 25 guardian and that Defendants would not let him serve as a guardian over his mother’s affairs, and  
 26 he was not permitted to visit his mother during the last seven months of her life.

27 The court appreciates that Plaintiff is hurt and disturbed about his mother’s treatment by  
 28 state authorities who appointed a guardian to see to his mother affairs. The court understands

1 that he is upset and hurt about how his mother was treated. However, plaintiff has not stated a  
2 claim upon which relief can be granted because he does not have standing to assert violations of  
3 the constitutional rights of his mother. *See Barrows v. Jackson*, 346 U.S. 249, 255 (1953)  
4 (stating “one may not claim standing in this Court to vindicate the constitutional rights of some  
5 third party”). All of the complaint allegations are directed to violations of his mother’s  
6 constitutional right, not his own. Leave to amend will not be granted because Plaintiff’s claims  
7 cannot be cured by the allegation of additional facts. *See Lopez v. Smith*, 203 F.3d 1122, 1126,  
8 1131 (9th Cir. 2000) (en banc) (citing *Doe v. United States*, 58 F.3d 494, 497 (9th Cir. 1995)  
9 (leave to amend should be granted unless amendment would be futile)).

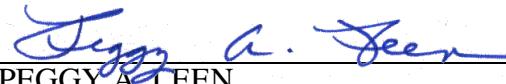
10 Accordingly,

11 **IT IS ORDERED:**

- 12 1. Plaintiff’s request to proceed in forma pauperis is GRANTED. Plaintiff shall not  
13 be required to pay the filing fee of four hundred dollars.
- 14 2. Plaintiff is permitted to maintain this action to conclusion without the necessity of  
15 prepayment of any additional fees or costs or the giving of a security therefor.  
16 This Order granting leave to proceed in forma pauperis shall not extend to the  
17 issuance of subpoenas at government expense.
- 18 3. The Clerk of Court shall file the Complaint.

19 **IT IS RECOMMENDED** that Plaintiff’s Complaint be DISMISSED for failure to state  
20 a claim upon which relief can be granted.

21 Dated this 23rd day of January, 2015.

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PEGGY A. LEEN  
25 UNITED STATES MAGISTRATE JUDGE

26 **NOTICE**

27 These findings and recommendations are submitted to the United States District Judge  
28 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days

1 after being served with these findings and recommendations, any party may file written  
2 objections with the court. Pursuant to Local Rule of Practice (LR) IB 3-2(a), any party wishing  
3 to object to the findings and recommendations of a magistrate judge shall file and serve *specific*  
4 *written objections* together with points and authorities in support of those objections, within  
5 fourteen days of the date of service of the findings and recommendations. The document should  
6 be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” The parties  
7 are advised that failure to file objections within the specified time may waive the right to appeal  
8 the district court’s order. *See Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991). The points and  
9 authorities filed in support of the specific written objections are subject to the page limitations  
10 found in LR 7-4.

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